

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
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F4a

Appeal Filed:	12/02/98
49th Day:	1/20/99
Staff:	DSL/CL-SC
Staff Report:	11/14/99
Hearing Date:	12/10/99
Commission Action:	
Open and Continue:	1/13/99
Substantial Issue:	3/11/99
Jurisdiction:	9/15/99
Revised Findings:	11/17/99

STAFF REPORT: REGULAR CALENDAR
REVISED FINDINGS: APPELLATE JURISDICTION

APPLICATION:	A-3-SLO-98-108, TRACT 1646
APPLICANT:	NOEL RODMAN AND RON HOLLAND
PROJECT DESCRIPTION:	Establishment of Commission appellate jurisdiction over the extension of the coastal development permit for Tract 1646 for a period of five years; and revisions to conditions imposed on the original permit relative to the provision of sewer and water to the 100-lot subdivision at the time the final map is presented for filing.
PROJECT LOCATION:	Northerly side of Los Osos Valley Road, (19 acre site between Pecho Road and Monarch Lane), Los Osos, San Luis Obispo County.
LOCAL APPROVALS:	Board of Supervisors Resolution to grant a five-year extension for the Tentative Map and coastal development permit for Tract 1646 and Board Minutes of 8/25 and 9/22/98 documenting the action to amend conditions attached to the original project.
FILE DOCUMENTS:	San Luis Obispo Certified LCP, San Luis Obispo Board Resolution No. 98-336, Minutes of the Board of Supervisors hearing on the project on 9/22 and 8/25/98, Coastal Commission Appeal File A-4-SLO-91-2, San Luis Obispo County file on Tract 1031 and Tract 1646. Database entry items for San Luis Obispo and San Mateo County Notices of Final Local Action on Coastal development permits, Monterey County Certified LCP, Title 20, County Zoning Code, and Los Osos Sewer Appeal, A-3-SLO-97-40. Transcript of 9/15/99 Commission Hearing on A-3-SLO-98-108.
COMMISSIONERS ON PREVAILING SIDE:	Wan, Desser, Dettloff, Allgood, Flemming, Kruer, Potter, Orr, Reilly, Daniels

PROCEDURAL NOTE

On March 11, 1999, the Coastal Commission determined that an appeal of the San Luis Obispo Board of Supervisors action to extend and amend the tentative map/coastal development permit for Tract 1646 raised a substantial issue with respect to the action's conformance with the County's certified Local Coastal Program. When the applicant objected at the March 11, 1999 hearing that the Commission had no jurisdiction under Public Resources Code section 30603, the Commission indicated that it would consider the applicant's jurisdictional argument at the time of the de novo hearing. On August 25, 1999 the Superior Court of San Luis Obispo County directed the Commission to consider the applicant's jurisdictional argument prior to its de novo review of the applicant's project. On September 15, 1999 the Commission conducted a public hearing on the issue of jurisdiction. At the conclusion of the hearing, the Commission, based on the staff recommendation and testimony taken at the hearing, found that it had jurisdiction over the County's action on this project.

SUMMARY OF STAFF RECOMMENDATION

Jurisdiction. The Commission has jurisdiction over this appeal under Public Resources Code section 30603. Section 30603 provides that the Commission has jurisdiction over "an action taken by a local government on a coastal development permit application" that fits into one of the categories enumerated in section 30603. The County's decision to extend the permit and amend permit conditions constitute "an action" under section 30603. Further, the Commission has jurisdiction over the County's action under subsection (a)(4) of section 30603 because the County's action involves a development (i.e., a subdivision) that is not listed as a principal permitted use in the County's LCP.

TABLE OF CONTENTS

SUMMARY OF STAFF RECOMMENDATION.....	2
TABLE OF CONTENTS	2
I. STAFF RECOMMENDATION.....	3
A. REVISED FINDINGS: APPELLATE JURISDICTION.....	3
II. FINDINGS AND DECLARATIONS	3
A. PROJECT DESCRIPTION, HISTORY OF LOCAL	3
AND COASTAL COMMISSION ACTIONS.....	
B. THE COMMISSION'S APPELLATE JURISDICTION.....	9
Conclusion.....	13

I. STAFF RECOMMENDATION

A. REVISED FINDINGS: APPELLATE JURISDICTION

Staff recommends that the Commission adopt the revised findings in support of its appellate jurisdiction to review the County's action on the request to extend and amend permit A-3-SLO-98-108.

Motion on the revised findings:

I move that the Commission adopt the following revised findings regarding jurisdiction over appeal A-3-SLO-98-108 under Public Resources Code section 30603.

Staff recommends a **YES** vote on the motion. The effect of a yes vote on the motion will be to adopt the revised findings. A majority of the Commissioners prevailing on the jurisdiction issue is required to approve the motion. Commissioners eligible to vote on the revised findings are Commissioners Wan, Desser, Dettloff, Allgood, Flemming, Kruer, Potter, Orr, Reilly and Daniels.

Resolution:

The Commission hereby finds that it has jurisdiction of this appeal under Public Resources Code section 30603(a)(4) and adopts revised findings to support its jurisdiction that are set forth in the staff report.

II. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION, HISTORY OF LOCAL AND COASTAL COMMISSION ACTIONS

The project amended by the County in their September 22, 1998 action is a 100-lot subdivision of three parcels (APN 74-430-01,16 and 74-022-22) totaling 19.4 acres. The proposed lots range in size from 6,000 square feet to 11,600 square feet. Various subdivision improvements (roads, utilities and limited grading) are also part of the approved project. The project does not include the construction of any homes on the parcels and it is unknown if the developer will sell the lots to individuals or seek permits to construct homes himself after the final map for the subdivision is filed. The final map cannot be filed until a number of conditions attached to approval of the tentative map have been satisfied.

1. Site Information

The site is in Los Osos-Baywood Park, an unincorporated area of San Luis Obispo County located along the lower reaches of Morro Bay that is partly developed with residential uses. (Please see Exhibit 1, Location Map.) Land uses surrounding the site include residential uses on lots of varying size to the east, west and south. The Sea Pines Golf Course is nearby to the northwest. Vacant land lies between the site and Morro Bay, some 1,500 feet to the north. (Please see Exhibit 2, Land Use

Map.) The three parcels that make up the site are zoned for single family residential use. The Certified LCP allows minimum parcel sizes of 6,000 square feet for this site if consistent with other plan policies. Currently the nearly flat site contains an older residence and a couple of outbuildings. Recent site inspections also revealed the presence of a golf driving range on the westerly half of the site, although the history of this development is as yet unclear.

Constraints on the site include its location within the “Prohibition Area” designated by the Regional Water Quality Control Board to prohibit the addition of any more septic systems into the area. A permit for a sewer plant to serve this area is currently under consideration by the Commission (Los Osos Wastewater Treatment Project, A-3-SLO-97-40). A Community Service District has been recently formed to carry through on development of a sewer project which will alleviate the impacts of the current method of sewage disposal and allow additional infill development in Los Osos.

2. History of the Project

This project has a very lengthy history that began several years before the San Luis Obispo LCP was certified. The present project was finally approved by operation of law on January 5, 1991 even though it was the subject of a hearing and action before the Subdivision Review Board in November and a hearing before the Board of Supervisors in December 1990. At the December 1990 hearing, the Board agreed not to act on the project, which had been recommended for denial by the Subdivision Review Board, if the applicant would revise the project description to include various “project features” that addressed particular concerns of the Board. These “features” became what are now referred to as project conditions. A history of this project follows.

Tract 1091: Tract 1091 was the predecessor project to Tract 1646, which is the subject of this appeal. It is important to understand the history of Tract 1091 because the applicant’s position is that Tract 1646 is an identical project.

Tract 1091 was submitted for county review in 1983 and proposed subdividing the 19.4 acre parcel into 76, 6,000 square foot lots for 38 duplexes and one 4.4 acre parcel to be developed as a small shopping center. Wastewater treatment was to be provided by an on-site “package plant.” In November 1983, a Draft EIR was released for this project and noted that “the proposed method of effluent disposal will have significant deleterious effects on local ground water.” In their response to the DEIR, the Regional Water Quality Control Board noted a number of concerns with the proposed wastewater treatment system and concluded “that seepage pits as designed may pose a health hazard.”

After the DEIR was released, the project was revised to replace the commercial development and the duplex lots with a 100-lot subdivision for single family home development. Staff has not discovered any addendum or supplement to the 1983 DEIR that addresses the revised project. The 1983 DEIR did, however, include a brief discussion of use of the site for 57 single-family lots in the section on alternatives to the proposed project. The DEIR noted that this less intensive use of the site would have fewer impacts than the 76 duplex lot and commercial subdivision proposed by the applicant.

Tract 1091 was approved by the county in December 1985 as a 100-lot subdivision which would be served by an on-site wastewater “package plant” and would be provided water by the local water company. The applicant submitted the project to the Coastal Commission for review as the San Luis Obispo County LCP was not yet fully certified. Commission staff prepared a recommendation

for denial of the subdivision citing wastewater treatment and potable water service as major issues. The applicant withdrew the application before the Commission could act on it. At the same time, the applicant was attempting to get Regional Board and County Health Department approval for a wastewater treatment system to serve the subdivision. By mid-1987, approval had still not been obtained, and the Regional Board stated that it could not prepare the wastewater discharge requirements until the applicant demonstrated that “the development is legally limited to 42 dwelling units” and that a public district had been formed to run the plant.

The record for Tract 1091 seems to end in mid-1987; however, a county staff report, prepared in November 1990 for Tract 1646, stated that the tentative map for Tract 1091 was still valid pursuant to Government Code Section 66452.6 (development moratorium).

Tract 1646: On March 31 1988, San Luis Obispo County assumed the authority to issue local CDPs under their now fully certified LCP. In September 1988, the applicant submitted an application for a vesting tentative map and a CDP for Tract 1646, a 100-lot subdivision substantially the same as Tract 1091. The application states that the project will rely on a community system for wastewater disposal and for water service. The proposed subdivision map, prepared by Westland Engineering, dated March 1989, shows a “package plant” on lot 95. An undated revision to this map shows 16 seepage pits/septic system on lots 45 and 46. It can thus be surmised that the applicant’s interpretation of “community system” for waste water disposal did not encompass any greater area than their 19 acres. The County accepted the application for processing on June 25, 1989.

The record reflects that the County staff believed that circumstances in the Baywood Park- Los Osos area had changed since the EIR for Tract 1091 had been prepared and that a supplement to that EIR was required to address wastewater, water and traffic concerns. The applicant balked at this requirement and instead offered to submit additional information on these issues, particularly traffic. Activity on processing the application slowed pending receipt of the desired information and it appears the project languished for over a year. The traffic information, promised by the applicant , was finally received in November 1990, after notice by the project proponents that they would seek approval of the map and CDP by operation of law. Information regarding water and wastewater disposal was never received and a supplement to the old EIR was never prepared.

On November 5,1990, the applicant provided the county with the appropriate notice under the Permit Streamlining Act (PSA) that Tract 1646 would be approved by operation of law unless the County acted on the proposal within 60 days (i.e, by January 4, 1991). The County prepared a staff report, recommending denial based on various inconsistencies with County planning and zoning standards and because the significant impacts of sewage disposal, traffic and water supply were unmitigated. The item was heard by the Subdivision Review Board at their November 30, 1990 meeting and was unanimously denied. The Subdivision Committee then referred the item to the Board of Supervisors with its recommendation that the Board deny it as well. The project was set for hearing before the Board of Supervisors on December 11, 1990.

Project Revisions: During the period between the filing of the PSA notice and the Board of Supervisors hearing, the applicant made a number of changes to the project in an attempt to avoid denial of the tentative map and coastal development permit. These revisions are documented in the following paragraphs:

- **Letter, November 30, 1990, John Belsher to Terry Wahler:** This letter was from John Belsher, the applicant's legal representative to Terry Wahler, the planner handling the item for the County. In the letter, Mr. Belsher refers to an earlier conversation with Mr. Wahler regarding "clarifications" to features of the project. The letter then goes on to memorialize these "clarifications." Of most interest to the Commission are those which deal with sewer and water infrastructure. Regarding sewage disposal, Mr. Belsher clarifies that although the tract map shows certain lots "as set aside as sewage disposal pits . . . by this letter, the project contains only such sewer system as may be approved by the Regional Water Quality Control Board Accordingly, there is no need for designation of sewage disposal pits and the designations should be dropped from the map." Regarding the water service issue, Mr. Belsher states, "The applicant also agrees to abide by County requirements for water supply in effect at the time approval of the final map is sought."

Mr. Belsher also attached draft recommended Findings and Conditions to this letter for the County's use. His suggested Condition 1 states "This project shall connect to a sewer system approved by the RWQCB for the State of California, such that the present RWQCB moratorium on new construction is lifted." Suggested Condition 2 states "The applicant will be required to demonstrate an adequate water supply consistent with the County policy in effect at the time the final map is filed."

- **Letter, November 30, 1990, John Belsher to Terry Wahler:** The contents of this letter are virtually identical to that of November 27, 1990 discussed above. In this letter, Mr. Belsher, wants the county to understand the exact status of the "clarifications" and proposed conditions contained in the November 27, 1990 letter. He therefore states "The following clarifications [described in the Nov. 27 letter] are intended to be incorporated into the project, in addition to having independent status as conditions. This approach is intended to address the concern that certain conditions may not be imposed as part of a vesting tentative map approval." The letter goes on to repeat the various clarifications and proposed conditions.
- **Letter, December 7, 1990, John Belsher to Evelyn Delany, Chair, and Members of the Board of Supervisors:** In this letter to the Board, Mr. Belsher explains that the "applicant has offered clarifications to his project and conditions to final map approval which alleviate central concerns expressed in the staff report". He goes on to say that these clarifications and conditions are set forth in his November 30, 1990 letter to Terry Wahler, a copy of which "is supposed to appear in your packets."
- **Letter, December 3, 1990, John Belsher to Nancy French:** This letter, to a Deputy County Counsel, was written in response to the concern that the County could not approve the project as modified by the applicant in the recent letters to Terry Wahler because of perceived inconsistencies with Map Act provisions regarding vesting tentative maps. Mr. Belsher notes that the County seems particularly concerned with the modifications relevant to sewage disposal, traffic and water supply. As a preface to this lengthy letter, he states "The purpose of this letter is to demonstrate the legal authority of the Board to approve the application with said Modifications. Moreover, this letter will demonstrate that even if the project is approved by operation of law, the applicant will be bound by the Modifications."

SRB Meeting: The Subdivision Review Board met on November 30, 1990 to hear the project and make a recommendation to the Board of Supervisors on it. The minutes of that meeting state that Mr. Belsher “submits a letter dated November 30, 1990 that contains modifications and conditions and would like the statement to reflect the changes in the project”. Staff suggested that the applicant was proposing a revised project “since the applicant . . . desires to pursue hooking up to a community sewer system approved by the Regional Water Quality Control Board instead of the seepage pits shown on the map.” At the conclusion of the hearing, the SRB voted 4-0 to deny the project.

1990 Board of Supervisors Hearing: The project was then scheduled for a hearing before the Board of Supervisors. The staff report prepared for the SRB hearing was provided to the Board along with the SRB recommendation that the project be denied. This staff report, dated November 14, 1990, was prepared before the applicant offered his modifications and conditions to the project and thus it does not discuss the revisions. The report was up-dated by a cover letter to the Board that stated that “the applicant’s representative has indicated a desire to propose a substantially different method of waste water disposal.” A copy of John Belsher’s letter laying out the various revisions was also provided to the Board.

The staff report was presented and a number of representatives from County agencies and members of the public spoke in support of the recommendation. Major issues were wastewater disposal, water service, traffic and the need for supplemental CEQA information to address these and other issues. The applicant’s team, including his legal advisor, Mr. Belsher, presented the revisions to the project outlined in his November 30, 1990 letter to Terry Wahler and asked that the Board accept these “clarifications.” After hearing from opponents and proponents, Supervisor Coy made a motion that Tract 1646 be “deemed approved” and that the applicant voluntarily incorporate a somewhat revised version of the “clarifications” or “proposed conditions” offered by Mr. Belsher in his November 30, 1990 letter. County Counsel advised that, before the Board acted, the revisions should be memorialized in writing. The item was then trailed to allow this to be accomplished. Later in the day, the hearing on Tract 1646 was resumed. Mr. Belsher brought back a document reflecting the Board’s suggestions for revisions to the “clarifications” and “proposed conditions” outlined in the November 30th letter. Mr. Belsher proposed that the conditions of approval be retitled as “Additional Project Description.” The Board then voted to recognize the project description as described by the applicant. In a subsequent vote, the Board voted to take no further action on the item. The project was approved by operation of law 25 days later on January 5, 1991, the termination of the 60 day notice period outlined in the Permit Streamlining Act. Relevant documents related to this action include the minutes of the December 11, 1990 Board meeting and the final revised “project description” containing 31 modifications submitted at that hearing.

1991 Commission Appeal: The project was appealed to the Coastal Commission on January 11, 1991 by local appellants. The Commission did not appeal the item separately. A staff report was prepared recommending denial and was distributed to interested parties. One week before the item was scheduled for hearing by the Commission, the local appellants withdrew their appeal and the approval by operation of law stood. The County considers that the Tentative Map and CDP became effective on June 14, 1991 (the date the withdrawal of the appeal was apparently reported to the Commission).

1993 Extension of Tract 1646: On September 1, 1992, the applicant's representative wrote to the County requesting that the County concur with his opinion that provisions in the Subdivision Map Act provided for an automatic extension of up to five years for his map and CDP because there was a development moratorium in effect in Los Osos. (Government Code Section 66452.6(b)(1)). In the body of the letter, the applicant's representatives reiterated that Tract 1646 was bound by the conditions of approval to connect to a sewer system to be approved by the RWQCB. (Letter to Alex Hinds from Carol Florence.) In his November 2, 1991 response to Ms. Florence's letter, Mr. Hinds stated that the County position was that the cited section of the Map Act was not applicable to Tract 1646 because it extended only to those maps that were approved before a moratorium was established. The RWQCB moratorium was established on January 8, 1988, long before an application for Tract 1646 was submitted for county review and three years before Tract 1646 was approved. The letter went on to advise the applicant to apply for a time extension under County ordinance and noted that such an extension request could trigger the need for additional environmental work to comply with CEQA. The applicant (Jerry Holland to Alex Hinds, November 16, 1992) responded with a request for an appeal of the Planning Director's decision on the five-year automatic extension, and a promise to work on an EIR update for the project. Mr. Holland also implied that an application for an extension under County ordinances, as suggested in Mr. Hinds' letter, might be forthcoming. On December 18, 1992, this request for an extension was made for both Tract 1091 and Tract 1646. (Letter, Terence Orton to Pat Beck, SLO Planner.)

The initial hearing on the appeal of the Planning Director's determination was set for January 26, 1993. A staff report was prepared recommending denial of the appeal based on a detailed analysis of the pertinent Map Act sections. Finding #1 of this 1993 County staff report states that "connection to a community-wide system was included as part of the project description provided by the applicant." The hearing was continued to February 9, 1993, largely due to receipt of a lengthy analysis of the applicability of the Map Act provisions for extension prepared by the applicant's legal representative, Roger Lyon. This analysis concluded that the five-year extension was applicable to Tract 1646, not because of the RWQCB moratorium but because the County had failed to issue the bonds needed to fund the community sewer plant. This failure prevented recordation of the final map thus triggering the provisions of Government Code 66452.6(f) that allow for a five-year extension.

The Board considered the appeal again on February 9, 1993. The staff recommendation was revised to recommend approval based on Mr. Lyon's January 25th letter. In order to make the required CEQA Finding, the Board concluded that the 1984 EIR prepared for Tract 1091 was adequate to support the 1990 approval by law. The Finding identifying the project described it as a tract map/coastal development permit that included the conditions submitted in December 1990. Finding #18 advised the applicant that "If in the future, the project requires further discretionary action, the project shall comply with all applicable laws, including the laws pertaining to further environmental review in effect at the time of the discretionary action." The approval extended Tract 1646/CDP until June 13, 1996 (unless sewer bonds were sold before that date, which they weren't). The findings then noted that the day after the development moratorium ends, the two-year period of time normally granted as part of Map/CDP approval will begin. Thus the project was valid through at least June 13, 1998.

1998 Extension and Amendment of Tract 1646: In November 1997, Ron Holland, the current applicant, requested a five-year time extension for Tract 1091/1646. (Letter, Ron Holland to Pat

Beck.) At some point during this period, the applicant also requested a staff “interpretation” of some of the project conditions attached to the 1990 permit relevant to sewage disposal, water service and other issues. The Planning Commission heard the extension request and gave the applicant a three-year extension. The Planning Commission also upheld the staff interpretation of the project conditions that required the applicant to comply with water policies in effect at the time the final map was presented for recording and precluded recording of the final map until community-wide sewage treatment facilities were available for connections. Both of these Planning Commission decisions were appealed to the Board of Supervisors by the applicant.

A staff report was prepared for the August 25, 1998 Board hearing on the appeal of the staff interpretation of five project features and the extension of the tentative map and the CDP. The Board held a hearing on the appeals on August 25, 1998 and, by a series of “tentative” motions, directed staff to return with language generally supportive of the applicant’s request. The hearing was continued to September 22, 1998 at which time the Board affirmed its earlier decision to approve a five-year extension and most of the applicant’s “interpretations” of project features.

Local residents and two Commissioners have appealed the Board’s decision to grant the five-year extension and to allow amendments to the permit conditions.

B. THE COMMISSION’S APPELLATE JURISDICTION

On March 11, 1999 the Commission determined that the County’s action on Tract 1646 raised a substantial issue regarding conformity with the Certified San Luis Obispo LCP. It deferred consideration of the applicant’s challenge to the Commission’s jurisdiction under PRC section 30603 until the de novo hearing. The applicant has since filed suit, challenging the Commission’s jurisdiction over this appeal. At a hearing on August 25, 1999 the San Luis Obispo County superior court did not address the applicant’s argument that the Commission lacked jurisdiction under PRC section 30603. Instead, the Court directed the Commission to address the matter of its jurisdiction under section 30603 before conducting its de novo review of the project. The Commission now addresses the jurisdictional issues under section 30603.

1. Jurisdiction Under Public Resources Code Section 30603

The staff report for the March 11, 1999 meeting contained proposed findings that were prepared in the event the Coastal Commission wanted to vote on the substantial issue question. The proposed findings were not adopted because the Commission did not formally vote on the issue. The Coastal Act, in section 30625(b)(2), does not require a formal hearing and vote on the question of substantial issue. Indeed the statute says that the Commission “shall hear an appeal unless it determines that no substantial issue exists”. Thus, the statute favors appeals. Once a matter within the Commission’s appellate jurisdiction has been appealed to the Commission, the Commission must hear the matter de novo unless the Commission affirmatively finds that the matter does not raise a substantial issue and declines to hear the appeal.

The Commission’s consideration of an appeal is conducted in the following manner. It is the practice of the Chairperson to inquire if any commissioners would like to discuss whether the appeal presents a substantial issue. If fewer than three commissioners raise a substantial issue

question, the Commission proceeds to a hearing on the merits of the appeal without a formal hearing and vote on the substantial issue question. Any findings needed to support the Commission's appellate jurisdiction are then included in the findings on the merits of the Commission's de novo permit action.

Challenges to the Commission's jurisdiction under section 30603 are unusual and the Commission's regulations do not address when the Commission must address such a jurisdictional challenge. When the applicant at the March 11, 1999 hearing raised the question whether the Commission had jurisdiction under section 30603, the Commission deferred consideration of the applicant's argument until the de novo hearing. Consequently, even had the superior court not issued its order, the Commission would have considered the applicant's jurisdictional challenge before undertaking its de novo review of the matter under appeal.

Section 30603 provides in pertinent part:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:

(1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance.

(2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

(3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

(5) Any development which constitutes a major public works project or a major energy facility.

In this case, the issue of the Commission's jurisdiction raises two questions: (1) Is the decision of a local government to amend or extend a permit an appealable action under section 30603 and (2) if so, does the County's action to extend and amend the applicant's coastal permit for a subdivision fall within one of the categories of appealable development contained in section 30603? (i.e. are subdivisions appealable?)

The Decision of a Local Government To Amend or Extend a Permit Is An Action of Local Government That May Be Appealed Under Section 30603. At the court hearing on August 25, 1999, the trial court raised an issue that the applicant had not raised before the Commission--whether the extension or amendment of a permit is the type of local government action that may be appealed under section 30603. The language, administrative practice and policy supporting the Coastal Act require that this question be answered in the affirmative.

First, as explained by Chief Counsel Faust at the hearing¹, the language of section 30603 includes the decision of a local government to amend or extend a permit. Please see Ex. 3, transcript of Mr. Faust's remarks pg. 20-24, the reasoning of which the Commission adopts as its own. Section 30603 refers broadly to "an action taken by a local government on a coastal development permit application." A decision taken by a local government in response to an application to amend or extend a coastal development permit therefore readily meets the definition of "an action taken" by a local government (see also, LCP Ordinance 23.01.043(c) which also provides broadly for appeal of "decisions by the County on a permit application . . .").

Second, the Commission's longstanding administrative practice has treated appeals from decisions of local government to amend coastal development permits as appealable under section 30603. Examples of such appeals include A-3-MCO-98-109 (Leslie) and A-3-SCO-90-101 (City of Watsonville). This appears to be the first time that a local government decision to extend a permit has been appealed to the Commission, so there is no similar administrative practice with regard to permit extensions.

Third, there are strong policy considerations to support the Commission's conclusion that permit amendments or extensions are appealable, because any other construction of section 30603 would defeat the intent of the Coastal Act to secure Commission oversight of certain types of development. For example, assume that a County approved a CDP on the condition that the applicant mitigate project impacts by creating wetland habitat. Further assume that this action was consistent with the LCP, and therefore no appeal to the Commission was filed and the ten working day appeal period passed. Later, the County approved an amendment to the CDP deleting the mitigation program. If the Commission had no appeal jurisdiction over local government decisions to amend a permit, a local government could defeat the purpose of the LCP policies and implementing ordinances by simply approving an amendment to delete the condition originally needed for LCP consistency and consequently avoid an appeal. Similar reasons support appellate review of local government decisions to extend a permit in a situation where changed circumstances demand a reexamination of whether a previously issued permit still meets the policies of the LCP.

The Commission therefore finds that of local government actions to amend or extend a coastal development permit are within the scope of section 30603.

The Commission has appellate jurisdiction under section 30603(a)(4). The staff report for the March 11, 1999 hearing stated that the project was appealable for two reasons : (1) under Public Resources Code Section 30603(a)(1) because the site was located between the first public road and the sea and (2) under Section 30603(a)(4) because the project being extended and amended (a 100-lot subdivision) was not listed as the principal permitted use for the zone district in which it is located.

The applicant and the County have submitted letters and graphics in support of their argument that the project site is no longer located between the first public road and the sea. (Please see Exhibits 4 and 5.) Commission staff has carefully reviewed these materials and determined that the adopted post-certification map for the project site is in error. Due to new road construction of Skyline Drive, the Holland site land is no longer within the geographic appeal area described in PRC

¹ Chief Counsel Faust comments on jurisdiction are found in the transcript attached as Exhibit 3 and are, by reference, incorporated into these findings.

Section 30603(A)(1). In 1991, Skyline Drive, pursuant to a valid CDP, was improved and accepted into the county road system. The geographic appeal area based on section 30603(a)(1) is now as shown on Exhibit 4 for the land in the immediate vicinity of the Holland parcel.

The County's action is appealable, however, under PRC Section 30603(a)(4). This subsection confers appellate jurisdiction over an action taken by a local government regarding:

(4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or the zoning district map approved pursuant to Chapter 6 (commencing with Section 30500).

The land use activity that is the subject of the County's action is a subdivision. A subdivision is "development" according to the definition of development found in Section 30106 of the Coastal Act. The question of whether a subdivision is the principal permitted use in a particular LCP is determined by the specific provisions in that LCP that define the LCP's principal permitted uses. Section 23.01.043(c)(4) of Title 23, Coastal Land Use Ordinance of the Certified San Luis Obispo LCP provides the regulations for the appeal of locally issued coastal development permits to the Coastal Commission. This section directly addresses the issue of appeals based on PRC Section 30603 (a) (4) by stating that "any approved development not listed in Coastal Table "O", Part I of the Land Use Element as a Principal Permitted (PP) Use" may be appealed to the Coastal Commission. (Emphasis added; Please see Exhibit 6, Table "O.")

Turning to Table "O", single family homes are listed as the principal permitted use for this site. The listing on Table "O" which describes the principal permitted and conditional uses allowed in this zone district does not include subdivisions of land as a principal permitted use. This matter is therefore within the Commission's appellate jurisdiction because it involves an action taken by a local government regarding a subdivision, which is development that has been approved by a County that is not listed as the principal permitted use in the County's LCP.

To attempt to "bootstrap" the initial subdivision of land, even if it is for ultimate residential use, into the category of a principal permitted use is an impermissible extension of the plain language of Table "O" and with PRC Section 30603(a) (4) which specifically provides for the appeal of all development that is not the principal permitted use in coastal counties, but not in cities. It is noteworthy that the statute extends greater appeal authority over coastal development permits issued by counties. The simple reason for this heightened level of oversight is because county coastal zones are much more likely to be rural or only partially developed in urban uses. Thus, in the counties, there are also more intact coastal natural resources to consider and, often, as the case here, less or inadequate infrastructure to support new development. Consistent with this policy to ensure a greater level of oversight over development which can significantly affect resources, it is not surprising that subdivisions are not listed as the principal permitted use on Table "O" because of the impacts on coastal resources that may attend their creation.

A review of the Final Local Action Notices from 1988 and 1992 to the present for San Luis Obispo County reveals that all subdivisions, including this one, have been identified as appealable to the Coastal Commission by the County. Staff provided three examples of subdivisions in San Luis Obispo that were identified as appealable by the County and could only have been so based on PRC 30603(a)(4) (Please see Ex. 3 transcript, comments of Charles Lester, page 24, lines 23-25). Staff has also researched how subdivisions are handled in Mendocino, Monterey and San Mateo Counties

for the purposes of PRC Section 30603(a)(4). The certified Implementation Plan for Mendocino County specifically states that “any approved division of land” is appealable to the Coastal Commission (Section 20.544.020B(3), County Zoning Code). In San Mateo County, all subdivisions have been treated as appealable. In Monterey County, they are also all appealable and listed specifically as “conditional” uses in each of the zone districts included in the LCP. (Title 20, Monterey County Code, Sections 20.10.050 Y, 20.12. 050 X, 20.14. 050 AA, 20.16.050 LL, 20.17.050 II, 20.18.060 NN, 20.21.060 D, 20.22.060 Y, 20.24.060 GG, 20.26.060 LL, 20.28.060 LL, 20.30.060 BB, 20.32.060 FF, 20.36.060 H, 20.38.060 I and 20.40.060 F.)

The Commission finds that it has jurisdiction under section 30603(a)(4) because the County’s action involved a development that is not listed as one of the principal permitted uses in the County’s LCP.

2. Substantial Issue

Finally, the appeal raises substantial issues regarding the consistency of the County action with a number of LCP procedures and policies including the length and propriety of extending the coastal development permit for the subdivision and the consistency of the amendments with Public Works Policy 1. The Commission’s findings, set forth in the staff recommendation dated November 17, 1999 for the de novo hearing portion of this appeal, explain how the county action conflicted with these important LCP policies and procedures and demonstrate the need for Commission review.

Conclusion

Based on the preceding discussions of Public Resources Code 30603 and the fact that substantial issues are raised concerning the project’s consistency with the LCP, the Commission finds that it has appellate jurisdiction over the applicant’s request to extend and amend his CDP for the subdivision.